

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Applications of Pacific Enterprises, Enova Corporation, Mineral Energy Company, B Mineral Energy Sub for Approval of a Plan of Merger of Pacific Enterprises and Enova Corporation With and Into B Energy Sub ("Newco Enova Sub"), the Wholly-Owned Subsidiaries of A Newly Created Holding Company, Mineral Energy Company.

Application 96-10-038
(Filed October 30, 1996)

OPINION ON REQUEST FOR INTERVENOR COMPENSATION

This decision grants \$12,260.14 to The Utility Reform Network (TURN) in compensation for substantial contributions to Decision (D.) 02-09-048.

1. Discussion

TURN was an active participant in this proceeding contributing substantially to D.02-09-048. The Commission adopted a seven-day delay in the transference of time-sensitive non-public information from the regulated utility subsidiaries of Sempra Energy to its unregulated Risk Management department. The Risk Management department provides substantial services for the unregulated Sempra Energy Trading affiliate. Sempra managers in Risk Management with access to information from both the regulated utilities and the unregulated trading company would have the potential for causing competitive harm. TURN supported the finding of an independent consultant, Larkin & Associates, that Risk Management could still perform its function for Sempra without timely gas acquisition planning and strategy information from Southern

California Gas Company (SoCalGas) and San Diego Gas & Electric (SDG&E). TURN further proposed the adopted seven-day minimum delay.

TURN performed its role subject to the constraints of a confidentiality agreement for some of the record in this proceeding.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812.¹ Section 1804(a) requires an intervenor to file a notice of intention (NOI) to claim compensation within prescribed time periods. The NOI must present information regarding the nature and extent of the customer's planned participation and an itemized estimate of the compensation the customer expects to request.² It may also request a finding of eligibility.

Other code sections address requests for compensation filed after a Commission decision is issued. Under § 1804(c), an intervenor requesting compensation must provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding." Section 1802(h) states that "substantial contribution" means that,

"in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's

¹ All statutory citations are to the Public Utilities Code.

² To be eligible for compensation, an intervenor must be a "customer," as defined by § 1802(b). In today's decision, "customer" and "intervenor" are used interchangeably.

contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

3. Timeliness of Request

Section 1804(c) requires an eligible customer to file a request for an award within 60 days of issuance of a final order or decision by the Commission in the proceeding. The Commission approved D.02-09-048 at its scheduled public meeting on September 19, 2002 and mailed it to parties of record on September 23, 2002. The sixtieth day after the Commission meeting was November 18, 2002. TURN's request for compensation was timely filed on November 18, 2002.

4. Substantial Contribution to Resolution of Issues

Pursuant to Pub. Util. Code § 1802(h), a party may make a substantial contribution to a decision in one of several ways. It may offer a factual or legal contention upon which the Commission relied in making a decision or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a

party's position in total.³ Where a party has participated in settlement negotiations and endorses a settlement of some or all issues, the Commission uses its judgment and the discretion conferred by the Legislature to assess requests for intervenor compensation.⁴

As we explain below, we find that TURN's efforts in A.96-10-038, in part, yielded a substantial contribution to D.02-09-048.

4.1 Recommendation 6-C-2 Conveyance of Proprietary Information

TURN provided justifications for delaying access by an affiliate, Sempra Energy's Risk Management department, to utility related information for gas acquisition plans and strategy. Sempra Energy Risk Management performs risk analysis for all of the Sempra companies including the unregulated trading affiliate Sempra Energy Trading. TURN supported a delay in providing sensitive information from the utility to the affiliate. The Commission decided that TURN's position in support of Larkin's recommendation that "(s)uch a delay period would lessen any existing opportunities for potential improper

³ The Commission has provided compensation even when the position advanced by the intervenor is rejected. D.89-03-063 awarded San Luis Obispo Mothers for Peace and Rochelle Becker compensation in Diablo Canyon Rate Case because their arguments, while ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved). (*See also*, D.89-09-103, Order modifying D.89-03-063, which stated that in certain exceptional circumstances, the Commission may find that a party has made a substantial contribution in the absence of the adoption of any of its recommendations. Such a liberalized standard should be utilized only in cases where a strong public policy exists to encourage intervenor participation because of factors not present in the usual Commission proceeding. These factors must include (1) an extraordinarily complex proceeding, and (2) a case of unusual importance. Additionally, the Commission may consider the presence of a proposed settlement.)

⁴ *See* D.98-04-0590, *mimeo.*, at 41.

conveyance of such information”⁵ was reasonable. TURN argued that Sempra Energy Risk Management was actively involved with Sempra Energy Trading operations and the utility data transmitted on a delayed basis to avoid even the appearance of manipulation.

4.2 Overall Benefits of Participation

In D.98-04-059, the Commission adopted a requirement that a customer demonstrate that its participation was “productive,” as that term is used in § 1801.3, where the Legislature provided guidance on program administration. (See D.98-04-059, *mimeo.*, at 31-33, and Finding of Fact 42.) D.98-04-059 explained that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

TURN submits that its contributions meet the burden of being a substantial contribution. TURN says it cannot quantify the value of the preventative measures it offered in this proceeding. The Commission has previously recognized the overall benefits from TURN’s participation in several decisions including D.00-10-014, (Emergency Standards Phase of Distribution Standards Rulemaking R.96-11-004). TURN contends that the Commission adopted its recommendation and TURN also asserts that its participation did not duplicate the showings of other parties. TURN also stresses that it minimized its

⁵ See D.02-09-048, *mimeo.*, at 41.

efforts by coordinating with the only other active parties, Sempra and the Southern California Generation Coalition.

We find that the participation of TURN related to D.02-09-048 was productive and avoided unreasonable duplication with other parties.

5. Reasonableness of Requested Compensation

TURN requests \$12,260.14 as follows:

	Year	Rate	Hours	Total
Attorney Costs				
Robert Finkelstein	2002	\$340	12.25	\$4,165.00
	2001	\$310	15.50	\$4,805.00
Compensation Request	2002	\$170	4.0	\$ 680.00
Randy Wu	2002	\$385	0.75	\$ 288.75
	2001	\$350	3.75	1,023.75
Total Attorney Costs				\$10,962.50
Other Costs				\$1,297.64
Total Costs				\$12,260.14

5.1 Hours Claimed

Time logs submitted by TURN include a daily breakdown of hours by activity. TURN correctly calculated the compensation request preparation time at one-half the rate for professional services. We find that TURN has adequately and reasonably supported the 36.25 hours for which it claims compensation related to A.96-10-038.

5.2 Hourly Rates

Section 1806 requires the Commission to compensate eligible parties at a rate that reflects the “market rate paid to persons of comparable training and experience who offer similar services.”

2001 Rates

We have previously adopted rates for 2001 for Finkelstein in D.02-06-070 and Wu in D.02-09-040. We will utilize these 2001 hourly rates again here.

2002 Rates

In adopting 2001 rate of \$310 for Finkelstein the Commission found an increase of 10% over rates for 2000 was reasonable in light of the economic conditions including the legal sector.⁶ TURN again requests an increase of approximately 10%, comparable to the adopted 2001 increase.

The Commission established the compensation rate of \$350 for Wu for the first time in 2001, which TURN described as the upper range for a partner. It was the same rate allowed for Florio, a counsel with over twenty years experience at TURN.⁷ In that decision Florio's rate increased by 10% over 2000. The same decision also adopted a 2002 rate of \$385, another 10% increase, for Florio. We will adopt the same \$385 rate for Wu in 2002.

TURN cites the *Of Counsel 700: Annual Survey of The Nation's Largest (U.S.) Law Firms* and points to rate changes for partners ranging from a low of 9.5% (2000/2001) for high-end partners to as much as 24% for the low-end of partner rates. Consistent with the 10% change for 2002 already adopted for Florio and Wu, we will adopt the same 10% increase for Finkelstein and authorize a rate of \$340 and half that rate, \$170, for preparing this compensation request.

5.3 Other Costs

TURN's request of \$12,260.14 includes \$1,297.64 for miscellaneous expenses associated with its efforts related to A.96-10-038. Compensation is

⁶ See D.02-03-033, *mimeo.*, at 6.

⁷ See D.02-09-040, *mimeo.*, at 8.

sought for photocopying, postage, and Lexis research expenses. We find these to be reasonable.

6. Award to TURN

We award TURN \$12,260.14 for contributions to D.02-09-048. Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing the 75th day after TURN filed its compensation request. Interest will continue until full payment. In D.02-12-051, we adopted an 85% to 15% responsibility for payment between SoCalGas and SDG&E according to their respective share of the California jurisdictional gas revenues filed with the Commission for each utility for 2001. We will use that allocation again.

As in all intervenor compensation decisions, we put TURN on notice that the Commission Staff may audit records related to this award. Adequate accounting and other documentation to support all claims for intervenor compensation must be made and retained. The records should identify specific issues for which TURN requests compensation, the actual time spent, the applicable hourly rate, and any other costs for which compensation is claimed.

7. Waiver of Comment Period

Pursuant to Rule 77.7(f)(6), the otherwise applicable 30-day period for public review and comment is being waived.

8. Assignment of Proceeding

Susan Kennedy is the Assigned Commissioner and Robert Barnett is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. TURN has made a timely request for compensation for its contributions to D.02-09-048.
2. TURN contributed substantially to D.02-09-048.

3. The participation of TURN was productive and avoided unreasonable duplication with other parties.

4. TURN requests 2001 hourly rates for Finkelstein and Wu that have previously been approved by the Commission.

5. The hours claimed for work performed in 2001 by Finkelstein and Wu are itemized and reasonable.

6. TURN requests new 2002 hourly rates of \$340 for Finkelstein and \$385 for Wu.

7. These 2002 hourly rates are reasonable.

8. The hours claimed for work performed in 2002 by Finkelstein and Wu are itemized and reasonable.

9. The miscellaneous costs incurred by TURN in the amount of \$1,297.64 are reasonable.

Conclusions of Law

1. TURN has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation.

2. TURN should be awarded \$12,260.14 for contributions to D.02-09-048.

3. Per Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the comment period for this compensation decision may be waived.

4. This order should be effective today so that TURN may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$12,260.14 in compensation for its substantial contribution to Decision 02-09-048.
2. Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) shall be responsible for making payment to TURN as follows: SoCalGas 85%; SDG&E 15%. Payment shall be made within 30 days of the effective date of this order. SoCalGas and SDG&E shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15, beginning with the 75th day after November 18, 2002, the date the request was filed.
3. The comment period for today's decision is waived.
4. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

Compensation Decision Summary Information

Compensation Decision(s):	
Contribution Decision(s):	D0209048
Proceeding(s):	A9610038
Author:	ALJ Barnett
Payer(s):	Southern California Gas Company and San Diego Gas & Electric Company

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Reason Change/ Disallowance
The Utility Reform Network	11/18/02	\$12,260.14	\$12,260.14	N.A.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Robert	Finkelstein	Attorney	The Utility Reform Network	\$ 310	2001	\$ 310
				\$ 340	2002	\$ 340
Randy	Wu	Attorney	The Utility Reform Network	\$ 350	2001	\$ 350
				\$ 385	2002	\$ 385